

PROCUREMENT POLICY
Fauquier County, Virginia

Policy Title: Procurement Policy
Policy Number: FDP-01

Effective Date: 1/13/2017
Supersedes Policy: Rev. 7/1/13

I. INTRODUCTION:

This policy sets forth the legal authority and responsibility for the purchasing process.

II. PURPOSE:

Public purchasing embraces a fundamental obligation to the general public to ensure that procurements are accomplished in accordance with the intent of the laws enacted by the appropriate legislative body. The intent of the Virginia General Assembly is set forth in the Virginia Public Procurement Act (Virginia Code, § 2.2-4300 et seq.). Fauquier County intends, through this policy, to assure the best quality and price for products and services; to protect the assets and funds of Fauquier County; and to maintain above-board relations with all suppliers within the Procurement Laws and Business Ethics as dictated by federal, state, and Fauquier County governments. Therefore the following Policy for purchasing is hereby adopted by the Fauquier County Board of Supervisors and shall take effect immediately.

III. GENERAL PROVISIONS:

A. Application.

This Policy applies to all contracts for goods, services, insurance and construction entered into by Fauquier County. This Policy is established by official action of the Fauquier County Board of Supervisors. All provisions of this Policy are in conformance with Chapter 43, § 2.2-4300 et seq. of the Virginia Code as amended.

When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal law and regulation which is not reflected in this Policy.

When this Policy does not specifically address a procurement issue, the issue may be resolved in accordance with the applicable section of the Commonwealth of Virginia's law and current policy.

B. Effective Date.

Contracts entered into prior to passage of this Policy shall continue to be governed by the procurement policy and regulations of Fauquier County and Commonwealth of Virginia in effect at the time those contracts were executed.

C. Severability.

If any provision of this Policy or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Policy which can be given effect without the invalid provision or application, and to this end the provisions of this Policy are declared to be severable.

III. GENERAL PROVISIONS, cont.

D. Definitions.

1. **Brand Name Specification.** A specification by manufacturers' names and catalogue numbers.
2. **Brand Name or Equal Specification.** A brand name specification to describe the standard of quality, performance, and other characteristics needed to meet Fauquier County requirements and which provides for the submission of equivalent products.
3. **Capital Asset.** Land, improvements to land, easements, buildings, building improvements, machinery, equipment, works of art and historical treasures, infrastructure, and all other tangible or intangible assets that are used in operations and that have initial useful lives extending beyond one year.
4. **Capital Improvement Projects.** Acquisitions or construction of major equipment or facilities with a useful life of ten or more years.
5. **Confidential Information.** Any information which is available to an employee only because of the employee's status as an employee of Fauquier County and which is not a matter of public knowledge or available to the public on request.
6. **Construction.** Building, altering, repairing, improving or demolishing any structure, building, and any draining, dredging, excavation, grading or similar work upon real property.
7. **Goods.** All material, equipment, supplies, printing and automated data processing hardware and software.
8. **Governing Body.** Fauquier County Board of Supervisors.
9. **Informality.** A minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, or delivery schedule for the goods, services or construction being procured.
10. **Invitation for Bid.** All documents, whether attached or incorporated by reference, used for solicitation of competitive sealed bids. Also referred to as "IFB".
11. **Nonprofessional Services.** Any services not specifically identified as professional services within this policy or by the Virginia Public Procurement Act, as amended.
12. **Professional Services.** Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, medicine, optometry, pharmacy, dentistry, or professional engineering.
13. **Public Body.** Any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board, or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this policy.

14. Purchasing Agent. The Official in charge of procurement as designated by the Fauquier County Board of Supervisors, presently the Procurement Manager.
15. Request for Proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals. Also referred to as "RFP".
16. Responsible Bidder or Offeror. A bidder or offeror that has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been pre-qualified, if required.
17. Responsive Bidder. A bidder that has submitted a bid which conforms in all material respects to the Invitation for Bid.
18. Services. Any work performed by an independent contractor which does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
19. Supplies, Materials, Equipment and Commodities. Any goods or articles which will be used by or furnished to any department, school, or other offices of Fauquier County.
20. Using Departments. All departments, agencies, schools, boards and commissions of Fauquier County, including unified support services, and offices supported from funds approved by Fauquier County.

IV. PURCHASING AUTHORITY:

A. Establishment and Appointment.

All purchasing activities shall be taken under the direction and supervision of the Purchasing Agent in accordance with the provisions in this policy.

B. Authority of the Purchasing Agent.

The Purchasing Agent, as authorized by the Fauquier County Board of Supervisors, shall have administrative responsibility for all purchasing by Fauquier County and shall serve as the principal public purchasing official for Fauquier County. This individual shall be responsible for the procurement of goods, services, insurance and construction in accordance with this policy, and the establishment of regulations providing a foundation for an efficient and compliant procurement system to meet the needs of Fauquier County. The Fauquier County Board of Supervisors may designate the Procurement Manager to serve as the Purchasing Agent for Fauquier County subject to federal and state codes and Fauquier County policies.

C. Delegation.

The Purchasing Agent, as authorized by the Fauquier County Board of Supervisors, may delegate purchasing authority, in writing, to purchase certain supplies, services, or construction items to other employees, if such delegation is deemed necessary for the

IV. PURCHASING AUTHORITY, cont.:

effective procurement of those items.

D. Revisory Authority.

The Purchasing Agent will work with the originating department to revise any purchase specifications which, in the Purchasing Agent's professional opinion, appear to restrict competition, in order to avoid any potential bid protests and maximize competition.

E. Rules and Regulations.

The Purchasing Agent shall prepare and maintain approved Purchasing Procedures/Regulations containing detailed rules and regulations, consistent with this policy and the laws of the Commonwealth of Virginia, governing the operation of Fauquier County purchasing activities.

V. COOPERATIVE PROCUREMENT

Conditions for Use.

Pursuant to the authority granted by § 2.2-4304 of the Virginia Code, Fauquier County may enter into cooperative procurement agreements for the purpose of combining requirements to increase efficiency or reduce administrative expenses in the procurement process.

All cooperative procurement contracts entered into or used by Fauquier County shall be based on procurement principles contained in this policy.

Except as otherwise prohibited in § 2.2-4304 of the Virginia Code, Fauquier County may participate in or purchase goods and services through contracts awarded by other governmental bodies when it is determined that: (i) the cooperative procurement is in the best interest of Fauquier County; (ii) the cooperative procurement is based on competitive procurement principles, and (iii) the cooperative procurement includes cooperative language within the original solicitation inclusive of addenda.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION

A. Competitive Sealed Bidding.

1. Conditions for Use. All contracts with non-governmental contractors for the purchase or lease of goods, or for the purchase of services (other than professional services), insurance, or construction in excess of Fifty Thousand Dollars (\$50,000) shall be awarded after competitive sealed bidding, or by such other procedures required or authorized by this Policy.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

2. Pre-Qualification of Bidders. Bidders may be pre-qualified prior to any solicitation of bids, whether for goods, services, insurance or construction. The pre-qualification process shall be consistent with the provisions of § 2.2-4317 of the Virginia Code. The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. Such form shall allow the prospective contractor seeking pre-qualification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor be considered a trade secret or proprietary information subject to the requirements of § 2.2-4342 of the Virginia Code. In all instances in which pre-qualification of potential contractors is required for construction projects, advance notice shall be given of the deadline for the submission of pre-qualification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in the provisions of § 2.2-4317 of the Virginia Code to be accomplished.

3. Public Notice of Invitation for Bid (IFB). Public notice of the Invitation for Bid shall be posted on the Procurement website and on eVA, the Commonwealth of Virginia Department of General Services electronic procurement website, at least ten (10) days prior to the last day set for the receipt of bids. The posting shall include a general description of the proposed purchase or sale and where solicitation documents may be obtained.

Sealed bids shall also be solicited from prospective suppliers who have registered as a vendor on eVA within the commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent, as selected by the vendor through the eVA registration process. Placement on eVA is no guarantee of solicitation for bids and/or quotes.

4. Use of Brand Names. Unless otherwise provided in the Invitation for Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand name, make or manufacturer, but rather conveys the general style, type, character, and quality of the articles desired, and any article which is determined to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.
5. Cancellation, Rejection of Bids and Waiver of Informalities. An Invitation for Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals may be canceled or rejected in whole or in part. The reasons for cancellation shall be made part of the contract file. Informalities may be waived when the determination is made that it is in the best interest of Fauquier County to do so.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

6. Bid Opening. All bids must be opened in public.
7. Negotiation with Lowest Responsible Bidder. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, negotiation may commence with the apparent low bidder to obtain a contract price within available funds; however, such negotiation may be undertaken only under conditions and procedures described in writing prior to issuance of the Invitation for Bid and summarized therein.

8. Withdrawal of Bid Due to Error.

- a. A bidder for a construction contract may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

The following procedure for bid withdrawal must be stated in the Invitation for Bids: The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice. The work papers, documents and materials may be considered trade secrets or proprietary information subject to the conditions of subsection F of § 2.2-4342 of the Virginia Code. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

- b. Procedures for the withdrawal of bids for other than construction contracts may be established.
- c. No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%).
- d. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.
- e. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

indirectly, from the performance of the project for which the withdrawn bid was submitted.

- f. Fauquier County shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If withdrawal of a bid is denied under the provisions of this section, the bidder shall be notified in writing stating the reasons for the decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, Fauquier County shall return all work papers and copies thereof that have been submitted by the bidder.
9. Bid Award. Bids shall be awarded to the lowest responsive and responsible bidder. When the terms and conditions of the invitation for Bid provide that multiple awards may be made, awards may be made to more than one bidder.

Unless canceled or rejected in accordance with Section VI (A.5) of this policy, a responsive bid from the lowest responsible bidder shall be accepted as submitted except as provided in Section VI (A.7) of this policy.

When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared and filed with the other papers relating to the transaction.

10. Tie Bids.

- a. In the case of a tie bid, preference shall be given to goods, services and construction produced in Fauquier County or provided by persons, firms or corporations having principal places of business in Fauquier County, if such a choice is available.
- b. Except as provided in subsection (a.) in the case of a tie bid, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available.
- c. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.
- d. Notwithstanding the provisions of subsections (b.) and (c.), in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

- e. In the event that none of the foregoing provisions of this section resolve the tie, the tie is decided by lot or the solicitation is cancelled and rebid.
- 11. Authority to Transact Business in Virginia. If required by law, any awarded bidder or offeror shall maintain a valid certificate of authority or registration to transact business in Virginia with the Virginia State Corporation Commission as required by Title 13.1 or Title 50 of the Virginia Code, during the term of the contract or any contract renewal. The contractor as awarded shall not allow registration to lapse at or its certificate of authority or registration to transact business in the Commonwealth of Virginia to be revoked or cancelled at any time during the term(s) of the contract. If the awarded contractor fails to remain in compliance with the provisions of this section, the contract may be voided at the sole discretion of Fauquier County.
- 12. Contract Pricing Arrangement. Except in case of emergency affecting the public health, safety or welfare, no contract shall be awarded on the basis of cost plus a percentage of cost. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section. Architect/engineer and similar contracts which are based on a percentage of construction cost shall not be prohibited by this section, providing the construction contract is not awarded by or to that architect/engineer or similar contracts.
- 13. Multi-Term Contracts.
 - a. Specified Period. Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time deemed to be in the best interest of Fauquier County provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.
 - b. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.
- 14. Modification of the Contract.
 - a. A contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent (25%) of the contract or \$50,000, whichever is greater, without the

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

advance written approval of the Fauquier County Board of Supervisors. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

- b. Nothing in this section shall prevent Fauquier County from placing greater restrictions on contract modifications.

15. Retainage on Construction Contracts.

- a. In any contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent (95%) of the earned sum when payment is due, with not more than five (5%) being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.
- b. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.
- c. Nothing in this section shall preclude the establishment of retention for contracts other than construction.

16. Bid Bonds on Construction Contracts. Except in cases of emergency, all bids or proposals for construction contracts in excess of One Hundred Thousand Dollars (\$100,000) shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent (5%) of the amount bid. Nothing in this section shall preclude a requirement of bid bonds to accompany bids or proposals for construction contracts anticipated to be less than One Hundred Thousand Dollars (\$100,000).

No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bids for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

17. Performance and Payment Bonds for Construction Contracts.

- a. Upon the award of any construction contract exceeding One Hundred Thousand Dollars (\$100,000) awarded to any prime contractor or as otherwise required in § 2.2-4337 of the Virginia Code, such contractor shall furnish to Fauquier County the following bonds:

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

- 1) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.
 - 2) A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.
- b. Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.
 - c. Bonds shall be made payable to the Fauquier County as appropriate.
 - d. Each of the bonds shall be filed in the contract file.
 - e. Nothing in this section shall preclude Fauquier County from requiring payment or performance bonds for construction contracts below One Hundred Thousand Dollars (\$100,000).
 - f. Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.
18. Action on Performance Bonds. No action against the surety on a performance bond shall be brought unless brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty, that give rise to the action.
19. Action on Payment Bonds.
- a. Any claimant who has a direct contractual relationship with the contractor and who has performed labor or furnished material in accordance with the contract documents in the prosecution of work provided in any contract for which a payment bond has been given, and who has not been paid in full before the

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

expiration of ninety (90) days after the day on which such claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.

- b. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 90 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished.

Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainage with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

- c. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.
- d. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

20. Alternative Forms of Security.

- a. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check, cashier's check or cash escrow in the face amount required for the bond.
- b. If approved by the Fauquier County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to Fauquier County equivalent to a corporate surety's bond.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

21. Bonds for Other than Construction Contracts. At the discretion of Fauquier County bidders may be required to submit with their bid, a bid bond in an amount previously determined and specified in the Invitation to Bid, as a guarantee that if the contract is awarded to such bidder, that the bidder will enter into the contract for the work mentioned in the bid. Additionally, Fauquier County may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation for Bid or Request for Proposal.

22. Insurance. Vendors providing services will be required to carry adequate insurance to protect Fauquier County from loss in case of accident, fire, theft, etc. throughout the term of the service contract. Proof of adequate insurance shall be furnished prior to acceptance of an award. The specific insurance requirements will be defined by Risk Management and will be included in the Request for Proposal or Invitation for Bid.

B. Competitive Negotiation.

1. Competitive Negotiation for Goods or Services Other Than Professional Services.

a. Conditions for Use.

1) Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

a) through a fixed price or not-to-exceed price design-build or construction management basis in accordance with § 2.2-4308 of the Virginia Code, as noted in section f. of this Policy segment; or

b) for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.

b. Request for Proposal. The Procurement Division shall issue a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. In the event that a numerical scoring system will be used in the proposal evaluation, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposals. The Procurement Division shall work with the Using Department to select evaluation committee members tasked with the evaluation of proposals.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

- c. Public Notice. Public notice of the Request for Proposal shall be given at least ten days prior to the date set for receipt of proposals by publication in a newspaper with general circulation in the County and, posted on the Procurement and eVA websites. In addition, proposals may be solicited directly from potential contractors who have registered as a vendor on eVA within the commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent, as selected by the vendor through the eVA registration process. Placement on eVA is no guarantee of solicitation for proposals.
- d. Receipt of Proposals. Proposals shall not be made public and shall be handled so as to not permit disclosure of the contents of any proposal to competing offerors or the general public during the process of negotiation. At the time fixed for receipt of proposal responses, the Procurement Division will read, and make available to the public on request, only the names of the offerors.
- e. Selection and Award. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposal, including price if so stated in the request for proposal. In the case of a proposal for information technology, as defined in § 2.2-2006 of the Virginia Code, Fauquier County shall not require an offeror to state in a proposal any exception to any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror for information technology proposals shall state any exception to liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiations. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the evaluation committee shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Contracts shall be awarded to multiple offerors if so stated in the original Request for Proposals. Should the evaluation committee determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.
- f. Design Build (DB) Procedures: in accordance with § 2.2-4308 of the Virginia Code, the following procedures outline the standard two-step competitive negotiation process to be used when contracting for Design-Build services:
 - 1) Criteria for use of DB: Design-build contracts are intended to minimize the project risk for Fauquier County and reduce the delivery schedule by overlapping the design phase and construction phase of a project.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

- 2) Approval for use of DB: Prior to taking any action to pursue a design-build project, the Using Department shall request authority, in writing, and receive approval from the Procurement Manager, to utilize the design-build method. The written request shall justify and substantiate that the design-build method is more advantageous than a competitive sealed bid construction contract with a general contractor and shall indicate how Fauquier County will benefit from using the design-build method. The written request shall also include justification that sealed bidding is not practicable and/or fiscally advantageous. These justifications for use of the design-build method shall also be stated in the Request for Qualifications (RFQ), Step I, and the Request for Proposals (RFP), Step II. Approval of or exceptions to this procedure may be granted by the Procurement Manager, who is the approving authority for requests to use DB procedures. The Procurement Manager may request further assistance in this determination from the County Administrator and/or County Attorney.
- 3) General procedure for DB: On projects approved for design-build, procurement of the contract shall be a two-step, competitive negotiation process.
 - a) The design-build process shall require Request for Proposals to include and define the criteria of such construction projects in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans' structural, mechanical (HVAC), and electrical systems; special communications; and may define such other requirements as the County determines appropriate for that particular construction project. The licensed professional engineer or architect as referenced below, shall advise the County regarding the use of this method for the project and, assist the County with the preparation of the Request for Qualifications/Request for Proposal and the evaluation process.
 - b) Evaluation Committee: The Using Department, working with the Procurement Manager, shall appoint an Evaluation Committee which shall consist of at least three members from the County, in addition to a licensed professional engineer or architect, either under the employment of Fauquier County or under contract to the County.
 - c) Basis of award for DB: The award of a design-build contract shall be in accordance with § 2.2-4301 of the Virginia Code and the criteria for the award shall be submitted to the Procurement Manager, in advance, for approval. It is noted that cost is a critical component of the selection process.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

- 4) Selection procedure for DB: On projects approved for design-build, the following two-step competitive negotiation process shall be used in selecting the design-build contractor and awarding a contract:
 - a) Step I, Selection of Qualified Offerors (RFQ): the County shall conduct a prequalification process as follows to determine which offerors are qualified to receive Request for Proposals, as the first step of the design-build process:
 - 1) The County shall prepare a Request for Qualifications (RFQ) containing the project requirements, building and site criteria, site and survey data (if available), the criteria to be used in evaluating the RFQ responses and other relevant information, including any unique capabilities or qualifications that will be required of the contractor. All offerors shall have a licensed Class "A" contractor and an Architect or Engineer registered in the Commonwealth of Virginia as part of the Project Team.
 - 2) The Procurement Manager shall post the RFQ in accordance with current standards for the posting of public bids in the Virginia Code and the current Procurement Policy.
 - 3) The Evaluation Committee shall evaluate each offeror's response and any other relevant information and shall determine which offerors are fully qualified and suitable for the project.
 - 4) The RFQ evaluation shall result in a short list of two to five offerors to receive the RFP. An offeror may be denied prequalification only as specified under § 2.2-4317 of the Virginia Code, but the short list shall also be based upon the RFQ criteria.
 - 5) At least thirty (30) days prior to the date established for the submission of proposals, the County shall advise in writing each offeror which sought prequalification, whether that offeror has been prequalified. Prequalified offerors that are not selected for the short list shall likewise be provided the reasons for such decisions. In the event that an offeror is denied prequalification, the written notification to that offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons. Notwithstanding the foregoing, the County reserves the right to reject all bids and cancel the Proposal.
 - b) Step II, Selection of Design-Build Contractor (RFP): the County shall send a Request for Proposal (RFP) to the design-build offerors on the short list

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

for the project and request formal proposals from them. The criteria for award shall be included in the RFP.

- 1) Sealed Technical Proposals as described in the RFP shall be submitted to the Procurement Manager, who will forward them to the Evaluation Committee. Separately-sealed Cost Proposals shall be submitted to the Procurement Manager and shall be secured and kept sealed until evaluation of the Technical Proposals and the design adjustments are completed.
- 2) The Evaluation Committee will evaluate the Technical Proposals based on the criteria contained in the RFP. The committee will inform each offeror of any adjustments necessary to make its Technical Proposal fully comply with the requirements of the RFP. In addition, the County may require that offerors make design adjustments necessary to incorporate project improvements and/or additional detailed information identified by the Evaluation Committee during design development.
- 3) Based on the adjustments made to the Technical Proposals, the offeror may amend its Cost Proposal. In addition, an offeror may submit cost modifications to its original sealed Cost Proposal which are not based on revisions to the Technical Proposals.
- 4) The Evaluation Committee shall evaluate (and rank, if technical rankings are to be considered as a criteria for award) the Technical Proposals. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror after approval of the Procurement Manager. Otherwise, the County shall open the Cost Proposals and apply the criteria for award as specified in the RFP and approved by the Procurement Manager.
- 5) The Evaluation Committee shall make its recommendation for the selection of a design-build contractor to the County Administrator based on its evaluations of the technical and cost proposals and all amendments thereto. The contract shall be awarded to the offeror who is fully qualified and has been determined to have provided the best value in response to the Request for Proposal.
- 6) The Evaluation Committee shall notify the Procurement Manager and the Board of Supervisors of the Evaluation Committee's selection of the design-build contractor and shall request authority to award a

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

contract from the Board of Supervisors, while providing all supporting documents to the Procurement Manager for issuance of the Notice of Award, once authorized.

- 7) The Procurement Manager will notify all offerors who submitted proposals which offeror was selected for the project. In the alternative, the Procurement Manager may notify all offerors who submitted proposals of the County's intent to award a contract to a particular offeror at any time after the County Administrator has selected the design-build contractor. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.
- 8) Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful offerors.

2. Competitive Negotiation for Professional Services.

- a. Conditions for Use. Contracts for professional services, as defined in Section III (D.12) of this Policy, where the aggregate cost is expected to exceed Fifty Thousand Dollars (\$50,000), shall be entered into in the following manner.
- b. Request for Proposals. The Procurement Division shall issue a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. In the event that a numerical scoring system will be used in the proposal evaluation, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposals. Professional Services Request for Proposals shall not, however, request that offerors furnish estimates of man-hours or cost for services.
- c. Public Notice. Public Notice of the Request for Proposal shall be given at least ten days prior to the date set for receipt of proposals by publication in a newspaper of general circulation in the County, and, posted on the Procurement and eVA websites. In addition, proposals may be solicited directly from potential contractors who have registered as a vendor on eVA within the commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent, as selected by the vendor through the eVA registration process. Placement on eVA is no guarantee of solicitation for proposals.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

- d. Selection and Award. Fauquier County shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial response and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used in the review of the professional competence of the offeror. At the discussion stage, Fauquier County may discuss non-binding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, non-binding estimates of prices for services.

Proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, Fauquier County shall not request or require offerors to list any exceptions to the proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance or standards developed pursuant to § 2.2-1132 of the Virginia Code, until after the qualified offerors are ranked for negotiations. At the conclusion of the discussions, and upon the basis of evaluation factors published in the request for proposal and all information developed in the selection process, Fauquier County shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed the most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to Fauquier County can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should Fauquier County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

- e. Request for Proposals, Open-End Architectural/Engineering. As permitted in Subdivision 3 a of § 2.2-4301 of the Virginia Code, contracts entered into for this professional service for use as-required on multiple projects shall follow the guidelines set forth in this section with the following exceptions:

Award. Contracts shall be awarded to multiple offerors if so stated in the original Request for Proposals, to facilitate use on multiple projects.

Single, Contract Term Project and Contract Renewal Limits. No single project shall exceed \$100,000 under contracts awarded within Open-End A/E contracts, and the sum of all projects during the contract term shall not exceed \$500,000. Contracts

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

awarded within Open-End A/E Professional Services shall not exceed one year plus four one-year renewals.

Rotation of Task Orders: Using Departments shall follow procedures for the distribution of multiple projects among the awarded firms per § 2.2-4303.1 of the Virginia Code.

Request for Proposals, Open-End Architectural/Engineering, Airport and Aviation Transportation Projects Limits: No single project shall exceed \$ 500,000 under contracts awarded within the Open-End A/E Airport contracts, and the sum of all projects during the contract term shall not exceed \$ 1.5 million.

C. Sole Source Procurement.

A contract may be awarded without competition when it is determined in writing, after conducting a good faith review of available sources, that there is only one source practicably available for the required good, service, insurance or construction item. Negotiations shall be conducted, as appropriate, to obtain the best price, delivery, and terms. A written notice shall be issued stating that only one source was determined to be practicably available, identify that which is being procured, the contractor selected and the date on which the contract will be awarded. For purchases exceeding Fifty Thousand Dollars (\$50,000), a notice of sole source shall be posted on the Procurement website for ten (10) calendar days, beginning on the day of award or the decision to award is announced, whichever occurs first, or, as soon thereafter as is practicable.

D. Emergency Purchases.

An emergency may arise in order to protect personal safety, life or property, i.e., an occurrence of a serious, urgent and threatening nature that demands immediate action to avoid termination of essential services or a dangerous condition. In such cases, a Purchase Order or contract may be awarded by the Procurement Division without competitive bidding or competitive negotiation: however, such procurement shall be made with as much competition as is practicable under the circumstances. A written determination and justification establishing the basis for the emergency and for the selection of the particular contractor/vendor must be submitted by the requesting department to the Procurement Division prior to creating an obligation. The Purchasing Agent will approve or disapprove the purchase as an emergency procurement. The approved written determination shall become part of the procurement file. For purchases with a total cost in excess of Fifty Thousand Dollars (\$50,000) a written notice, usually the emergency justification form, stating that the contract is being awarded, or has been awarded on an emergency basis shall be publicly posted on the Procurement website for ten (10) calendar days, beginning on the day of the award or the decision to award is announced, whichever occurs first, or as soon thereafter as is practicable.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

Notwithstanding the foregoing, if an emergency occurs at times other than regular business hours, the concerned department may purchase directly the required goods or contractual services. The requesting department shall, however, whenever practicable, secure competitive telephone bids and order delivery to be made by the lowest responsible bidder. The requesting department shall also, as soon as practicable, submit to the Procurement Division a tabulation of bids received, if any, a copy of the delivery record and a written explanation of the circumstances of the emergency. In the event of any emergency which utilizes the Fauquier County Emergency Operation Plan, documentation shall follow the guidelines of the most recent edition of that plan.

E. Small Purchases.

Purchases where the estimated total cost of the materials, equipment, supplies, shipping, insurance, construction, or service are not expected to exceed Fifty Thousand Dollars (\$50,000) may be awarded in accordance with procedures delineated in the most recently approved Purchasing Procedures/Regulations.

Small purchase procedures shall include but are not limited to the following provisions:

1. Purchases from nongovernmental sources where the estimated total cost of the goods or services are \$25,000 or greater but less than \$50,000 may be made after soliciting a minimum of four (4) written quotations.
2. Purchases from nongovernmental sources where the estimated total cost of the goods or services is \$5,000 or greater but less than \$25,000 may be made after soliciting a minimum of three (3) verbal or documented telephonic quotations.
3. Purchases where the estimated total cost of the goods or services is less than \$5,000 may be made upon receipt of one fair and reasonable price.
4. Purchase of used equipment, defined as equipment which has been previously owned and used where the estimated total cost is \$5,000 or greater but less than \$50,000 may be made after soliciting a minimum of two (2) written quotations; award shall be based on the offer deemed to be in the best interest of Fauquier County. Prior to the award of a contract for used equipment, a person technically knowledgeable of the type of equipment sought shall document the condition of the equipment stating that this purchase would be in the best interest of Fauquier County as part of the purchase documentation; price reasonableness shall be considered in determining award.
5. Nothing in this section shall preclude requiring more stringent procedures for purchases made under the small purchase method.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

F. Use of Small Dollar Purchasing or Vendor-Specific Cards.

Small dollar purchasing or vendor-specific cards may be utilized for the purchases indicated in the purchasing card procedures. Purchasing card procedures/regulations outlining the specific, complete details for use of the purchasing card must be reviewed and approved by the County Administrator prior to implementation and adoption. Misuse of any purchasing card program is subject to the same action stated in Section VI (J) and X (L) of this Policy, in addition to any legal remedies outlined in the specific card procedures/regulations.

G. Exemptions and Exceptions.

In accordance with §§ 2.2-4344 and 2.2-4346, Virginia Code, purchases exempted from competitive procurement shall include the following: purchases of goods or services produced or performed by persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired, or employment services organizations that offer transitional or supported employment services serving individuals with disabilities, legal services, provided that pertinent provisions of Chapter 5 (§ 2.2-500 et seq.) of Title 2.2 of the Virginia Code remain applicable and expert witnesses and other services associated with litigation or regulatory proceedings, and certain essential election materials and services in accordance with Article 1 (§2.2-4300 et seq.), Article 2 (§2.2-4303, et seq.) and Article 5 (§2.2-4357, et seq) of Title 2.2 of the Virginia Code.

Fauquier County may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which Fauquier County is a member, if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that a determination is made in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

Exceptions to Competitive Procurement Requirements.

Competition normally is either not practicable or available for purchase of the goods or services listed below. Therefore, when a department's estimated cost of goods or services is estimated to be \$50,000 or less for the entire duration of the requirements, purchases may be made upon receipt of a minimum of one written quotation. This section is in accordance with §2.2-4303 of the Virginia Code.

1. Accreditation and Testing: Accreditation fees and academic testing services.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

2. Athletic Fees: Fees associated with participation in athletic tournaments and events including registration and game guarantees for all athletic events.
3. Athletic Officials/Referee: Umpires, referees, and other sports officials to officiate competitive athletic and sporting events sponsored by Fauquier County. The services include observing the play, detecting infractions of rules, and imposing penalties established by the rules and regulations of the various sports.
4. Books, printed materials, reprints and subscriptions: Books, printed materials, reprints, and subscriptions (e.g., print or electronic), pre-recorded audio and video material (in any media), when only available from the publisher/producer. Justification must be prepared to document verification of exclusivity.
5. Consulting: Academic/research consulting services. This exemption is limited to services provided by an academician employed by a public or private institution of higher education.
6. Copyright/Royalty Fees: Purchase of the exclusive legal right to reproduce, publish, sell, or distribute the matter and form of something (as a literary, musical, or artistic work, ASCAP).
7. Dues and Professional Licenses: Professional organization membership dues and fees to maintain professional licenses.
8. Honoraria/Entertainment: Payment for a service (e.g., making a speech) such as authors, speakers, lecturers, musicians, performing artists.
9. License Agreements: License agreements with the owner of the source code for existing software and/or manufacturer of sophisticated scientific equipment.
10. Perpetual Software Support: Competitively purchased software that requires annual support including upgrades to keep the product current, is considered both proprietary and perpetual, as support cannot be provided by anyone other than the source code or current program/software holder. For that reason, software support does not require the same competitive justification as other purchases so long as the original purchase is competitive and the same company provides the support, until that product/software is no longer utilized. Using Departments must verify that the pricing is fair and reasonable and that the product/software is still available through the current provider with each purchase.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

11. Media Purchases: Advertisements and legal notices such as in newspapers, magazines, journals, radio, television, etc.
12. Other Agencies: purchases from the federal government, other states and their agencies or institutions, and public bodies. Care must be exercised to verify pricing as fair and reasonable.
13. Training:
 - a. Training provided by professional organization: Classes, workshops, or conferences provided by a professional organization rather than a training vendor or individual. This exemption is limited to organizations that are associated with professional accreditation or certification.
 - b. Specialized training: Training that is specialized, proprietary, and not typically available to the general public for which competition is generally unavailable. Specialized technical training provided by a vendor for their equipment is included in this category. Justification must be prepared to document verification of exclusivity.

H. Collusion among Bidders.

More than one bid from an individual, firm, partnership, corporation or association under the same or different name will be rejected. Reasonable grounds for believing that a bidder is interested in more than one bid for the work contemplated will cause rejection of all bids in which the bidder is interested. Any or all bids may be rejected if there is any reason for believing that collusion exists among the bidders. Participants in such collusion may not be considered in future bids for the same work. Each bidder, as a condition of submitting a bid, shall certify that he is not a party to any collusive action as herein defined.

I. Contract Award Approval.

No contract resulting from a formally issued IFB or RFP that exceeds One Hundred Thousand Dollars (\$100,000) shall be awarded without the concurrence of the Fauquier County Board of Supervisors.

J. Unauthorized Purchases.

1. Whenever any officer or employee of Fauquier County purchases or contracts for any supplies or services contrary to the provisions of this Policy or the Purchasing Procedures/Regulations, such purchases or contract shall be void and shall not be considered to be an obligation of Fauquier County.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

2. Any Fauquier County officer or employee making or approving a purchase contrary to the provision of this Policy or the Purchasing Procedures/Regulations shall be personally liable for the costs of such purchases or contract. If already paid out of Fauquier County funds, the amount thereof may in the name of Fauquier County, be recovered by deduction from that person's compensation or an appropriate legal action instituted.

K. Competitive Bidding or Competitive Negotiation on State-Aid Projects.

No contract for the construction of any building or for an addition to or improvement of an existing building by Fauquier County for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under Section VI (A and B). The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to the Virginia Public Procurement Act, (§ 2.2-4300 et seq.).

L. Public Access to Procurement Information.

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Cost estimates relating to a proposed transaction prepared by or for Fauquier County shall not be open to public inspection.

Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that Fauquier County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event Fauquier County decides not to accept any of the proposals or decides to reopen the contract. Subject to the provisions of this section, proposal records shall be open to public inspection after award of the contract.

Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

Pursuant to § 2.2-4317 of the Virginia Code, trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or pre-qualification application shall not be subject to public disclosure under the Virginia

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, cont.

Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

M. Employment Discrimination by Contractor Prohibited.

Every contract of over \$10,000.00 shall include the provisions contained in subsections (1) and (2) below:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an Equal Opportunity Employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000.00 so that the provisions will be binding upon each subcontractor or vendor.

VII. DEBARMENT:

A. Authority to Debar or Suspend.

After ten days written notice as provided for in VII (B) to the person involved and with no legal action taken by that person per VIII (H) of this Policy, a person may be debarred for cause from consideration for award of contracts. The debarment shall be and remain effective for a period commensurate with the seriousness of the cause as determined. A person may be suspended from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment.

VII. DEBARMENT, cont.:

The suspension shall not be for a period exceeding six (6) months. When debarment or suspension occurs, such debarment or suspension shall be considered to be just cause for cancellation of any existing contracts held by the person or business debarred or suspended.

The causes for debarment or suspension shall include:

1. Conviction for commission of a criminal offense relating to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;
3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
4. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
5. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
6. Any other cause determined to be so serious and compelling as to affect responsibility as a Fauquier County contractor, including debarment or suspension by another governmental entity for any cause in this Policy; and for violation of the ethical standards set forth in this Policy.

B. Decision to Debar or Suspend.

A written decision to debar or suspend shall be issued. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial review.

C. Notice of Decision.

A copy of the decision required by VII (B) shall be final and conclusive unless legal action is taken by the debarred or suspended person as provided for in VIII (H) of this Policy.

VIII. APPEALS AND REMEDIES FOR BID PROTESTS:

A. Ineligibility of Bidder, Offeror or Contractor.

As provided for in § 2.2-4357 of the Virginia Code any bidder, offeror or contractor refused permission to participate, or disqualified from participating, in contracts shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror or contractor appeals within thirty days of receipt by instituting legal action as provided in VIII (H) of this Policy.

If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

B. Appeal of Denial of Withdrawal of Bid.

A decision denying withdrawal of bid under the provisions of Section VI (A.8) of this Policy shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by instituting legal action as provided in Section VIII (H.2) of this Policy.

If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of Section VI (A.8) of this Policy, prior to appealing, shall deliver to the Procurement Division a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next lowest bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious or in accordance with the Constitution of Virginia, applicable state law or regulation, the sole relief shall be withdrawal of the bid.

C. Determination of Non-Responsibility.

As provided for in § 2.2-4359 of the Virginia Code any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing. Such notice shall state the basis for the determination, which shall be final unless legal action is taken within ten days by the bidder as provided in Section VIII (H.1) of this Policy.

If, upon appeal, it is determined that the decision was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation or the terms and conditions of the Invitation for Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder or offeror is a responsible bidder for the contract in question or directed award as outlined in the Invitation for Bid. If it is determined that the decision was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation or the terms and conditions of

VIII. APPEALS AND REMEDIES FOR BID PROTESTS, cont.:

the Invitation for Bid, and the award has been made, the relief shall be as set forth in Section VIII (D) of this Policy. A bidder or offeror contesting a determination that he is not a responsible bidder or offeror for a particular contract shall proceed under this section, and may not protest the award or proposed award under Section VIII (D) of this Policy.

Nothing contained in this section shall be construed to require Fauquier County, when procuring by the Competitive Negotiation method to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

D. Protest of Award or Decision to Award.

1. Any bidder or offeror who desires to protest the award or decision to award of a contract shall submit such protest in writing to the County Administrator as defined in the Terms and Conditions of the IFB or RFP, as applicable, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Administrator shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of the written decision by instituting legal action as provided in Section VIII (H.3) of this Policy.
2. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The proposed award shall be cancelled or revised to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the contract may be declared void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.
3. When it is determined, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article X of this Policy, award of the contract to a particular bidder may be enjoined.

E. Effect of Appeal upon Contract.

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this Policy shall not be affected by the fact that a protest or appeal has been filed.

VIII. APPEALS AND REMEDIES FOR BID PROTESTS, cont.:

F. Stay of Award During Protest.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

G. Contractual Disputes.

Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment, however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claim shall not delay payment of amounts agreed due in the final payment.

A procedure for consideration of contractual claims shall be included in each contract. Such procedure, which may be incorporated into the contract by reference, shall establish a time limit for a final decision in writing by the County Administrator.

The decision of the County Administrator shall be final and conclusive unless the contractor initiates legal action as provided in § 2.2-4364 of the Virginia Code within six (6) months of the date of the final decision on a claim.

A contractor may not institute legal action as provided in Section VIII H (5) of this Policy prior to receipt of Fauquier County's decision on the claim.

H. Legal Actions.

1. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the Circuit Court of Fauquier County challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulation or the terms and conditions of the Invitation for Bid, or in the case of pre-qualification denial, that such decision was not based upon the criteria for denial of pre-qualification set forth in subsection VI (A.2).
2. A bidder denied withdrawal of a bid under Section VIII B of this Policy may bring an action in the Circuit Court of Fauquier County challenging that decision, which shall be reversed only if the bidder establishes that the decision was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulation or

VIII. APPEALS AND REMEDIES FOR BID PROTESTS, cont.:

the terms and conditions of the Invitation for Bid.

3. A bidder, offeror or contractor may bring an action in the Circuit Court of Fauquier County challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation for Bid or Request for Proposal.
4. If injunctive relief is granted, the court, upon request of Fauquier County, shall require the posting of reasonable security to protect Fauquier County.
5. Subject to procedures in Section VIII of this Policy, a contractor may bring an action involving a contract dispute with Fauquier County in the Circuit Court of Fauquier County.
6. Nothing herein shall be construed to prevent Fauquier County from instituting legal action against a contractor.

IX. ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES:

A. Small, Women-, Minority-, and Service Disabled Veteran-Owned Business Participation.

The Procurement Department shall cooperate with state and federal agencies to facilitate the participation of small, women-, minority-, and service disabled veteran-owned businesses in the procurement transactions of Fauquier County. Fauquier County grants no preferences or set-asides to such businesses. The Procurement Division shall assist any such business in completing or understanding bids or proposals.

B. Discrimination Prohibited.

In the solicitation of awarding of contracts, Fauquier County shall not discriminate against any bidder or offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran or other basis prohibited by state or federal law relating to discrimination in employment.

X. ETHICS IN PUBLIC CONTRACTING

A. Purpose.

The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to the following acts contained within the Virginia Code, the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title

X. ETHICS IN PUBLIC CONTRACTING, cont.

18.2 of the Virginia Code as amended. The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

B. Definitions.

The words defined in this section shall have the meanings set forth below throughout this policy section.

"Immediate family" shall mean spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

"Official responsibility" shall mean administrative or operating authority, whether intermediate or final, to initiate, approve, and disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

"Pecuniary interest arising from the procurement" shall mean a personal interest as defined in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

"Procurement transaction" shall mean all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Employee" shall mean any person employed by Fauquier County, including elected officials or appointed members of governing bodies.

C. Proscribed Participation by Employees in Procurement Transactions.

No employee having official responsibility for a procurement transaction shall participate in that transaction of behalf of the public body, except as noted in §2.2-3112 of the Virginia Code, when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror, or contractor involved in the procurement transaction; or
2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or
3. The employee, the employee's partner, or any member of the employee's immediate

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family has a pecuniary interest arising from the procurement transaction; or

4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with the bidder, offeror or contractor.

D. Solicitation or Acceptance of Gifts.

No employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged. Fauquier County may recover the value of anything conveyed in violation of this section.

E. Disclosure of Subsequent Employment.

No employee or former employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by Fauquier County, unless the employee or former employee provides written notification to Fauquier County prior to commencement of employment by that bidder, offeror or contractor.

F. Gifts by Bidders, Offerors, Contractors or Subcontractors.

No bidder, offeror, contractor or subcontractor shall confer upon any employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

G. Kickbacks.

No contractor or subcontractor shall demand or receive from any of his suppliers or subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

No person shall demand or receive any payment, loan, subscription, advance, deposit or money services or anything of value in return for an agreement not to compete on a contract.

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If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order, and ultimately borne by Fauquier County and will be recoverable from both the maker and the recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

H. Purchase of Building Materials, etc., from Architect or Engineer Prohibited.

No building materials, supplies or equipment for any building or structure constructed by or for Fauquier County shall be sold by or purchased from any person employed as an independent contractor by Fauquier County to furnish architectural or engineering services, but not construction for such building or structure; or from any partnership, association, or corporation in which such architect or engineer has a personal interest as defined in § 2.2-3101 of the Virginia Code.

No building materials, supplies or equipment for any building or structure constructed by or for Fauquier County shall be sold by or purchased from any person which has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by Fauquier County to furnish architectural or engineering services in which such person has a personal interest as defined in § 2.2-3101 of the Virginia Code.

The provisions of this section shall not apply in the case of an emergency.

I. Participation in Bid Preparation.

No person who is compensated to prepare an Invitation for Bid or Request for Proposal for or on behalf of Fauquier County shall submit a bid or proposal for that procurement or any portion thereof, or, disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, Fauquier County may permit such person to submit a bid or proposal for that procurement or any portion thereof if Fauquier County determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner prior to the best interests of Fauquier County.

J. Misrepresentations Prohibited.

No employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

K. Certification of Compliance Required; Penalty for False Statements.

1. Fauquier County requires employees having official responsibility for procurement

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transactions in which they participated to annually submit for such transactions, a written certification that they complied with the provisions of the Virginia Code.

2. Any employee required to submit a certification as provided in subsection (1) of this section that knowingly makes a false statement in such certification shall be punished as provided in Section X (L) of this Policy.

L. Penalty for Violation.

Any person convicted of a willful violation of any provision of Section X of this policy shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his/her employment.

LEGAL REFERENCE: Virginia Code, 1950 as amended, §§ 2.2-4300 et seq., 22.1-68, 22.1-70, 22.1-92 (A), 22.1-296.1.